

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY ABIDJAN

LIMITED OFFICIAL USE STATE 265152

FOLLOWING REPEAT STATE 265152 ACTION COTONOU 8 NOV

QUOTE

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E.O. 11652: N/A

TAGS: EINV

SUBJECT: EXPROPRIATED US PROPERTY AND ELIGIBILITY FOR
GENERALIZED PREFERENCES (GSP)

REFS: (A) STATE A-10523 (DEC. 28, 1973); (B) COTONOU 1639;
(C) STATE 225826

1. INTERAGENCY COMMITTEE CONSIDERING RECOMMENDATIONS TO
THE PRESIDENT CONCERNING COUNTRY ELIGIBILITY FOR GSP UNDER
THE EXPROPRIATION PROVISION (SEC. 502 (B)(4) OF THE TRADE
ACT OF 1974 HAS NOT YET COMPLETED ITS REVIEW OF A NUMBER
OF "GRAY-AREA" COUNTRIES, INCLUDING DAHOMEY, AND WILL BE
RECONSIDERING THE CONTINUED ELIGIBILITY OF SUCH COUNTRIES
BEFORE THE PLANNED TIME FOR IMPLEMENTATION OF GSP ON
JANUARY 1, 1976. IF APPROPRIATE, WE WILL RECOMMEND
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NECESSARY CHANGES TO THE LISTS OF ELIGIBLE BENEFICIARIES

AT THAT TIME.

2. WITH PARTICULAR REFERENCE TO DAHOMEY, IT WILL BE DIFFICULT TO SUSTAIN A DETERMINATION THAT DAHOMEY IS TAKING STEPS TO DISCHARGE ITS INTERNATIONAL OBLIGATIONS AS REQUIRED BY SEC. 502 (B)(4)(D)(II) OF THE ACT UNLESS SIGNIFICANT PROGRESS TOWARD SETTLEMENT OF OUTSTANDING

CLAIMS OF TEXACO AND MOBIL IS MWDE PRIOR TO OUR DECEMBER REVIEW. ILLUSTRATIVE INTERIM STEPS BY THE MRGD MIGHT INCLUDE ISSUANCE OF THE COMPENSATION COMMISSION'S FINDINGS CONCERNING THE CLAIMS OF TEXACO AND MOBIL, OR OTHERWISE BEGINNING SERIOUS DISCUSSIONS OR NEGOTIATIONS WITH THE COMPANIES ON COMPENSATION.

3. IF WE WERE UNABLE TO SUSTAIN SUCH A DETERMINATION, DAHOMEY WOULD LOSE ITS ELIGIBILITY FOR GSP UNLESS THE PRESIDENT INVOKED A "NATIONAL ECONOMIC INTEREST" WAIVER. WE HAVE NOT YET CONSIDERED WHETHER SUCH WAIVER WOULD BE FEASIBLE OR APPROPRIATE FOR DAHOMEY.

4. EMBASSY SHOULD ALSO BE AWARE OF SIMILAR LEGISLATION CALLING FOR THE USG TO SUSPEND B LATERAL ASSISTANCE, AND TO VOTE NEGATIVELY ON LOANS UNDER CONSIDERATION IN INTERNATIONAL DEVELOPMENT BANKS, TO COUNTRIES WHICH EXPROPRIATE AMERICAN PROPERTY IN VIOLATION OF INTERNATIONAL LAW (THE HICKENLOOPER AND GONZALEZ AMENDMENTS, RESPECTIVELY). THERE IS NO EXPRESS OR AUTOMATIC LINKAGE BETWEEN THE THREE PROVISIONS(AND THE GONZALEZ AMENDMENT HAS NO "NATIONAL

INTEREST" OR "NATIONAL ECONOMIC INTEREST" WAIVER, AS DO HICKENLOOPER AND 502(B)(4), RESPECTIVELY), BUT THERE ARE SIMILARITIES IN LANGUAGE AND INTENTION. AN ADVERSE FINDING UNDER BTPWKB(4) WOULD AS A PRACTICAL MATTER INCREASE THE LIKELIHOOD THAT THE USG WOULD APPLY HICKENLOOPER. IT IS ALMOST CERTAIN THAT THE USG WOULD APPLY GONZALEZ IN THESE CIRCUMSTANCES.

5. TO PUT THE MRGD ON NOTICE OF POSSIBLE TERMINATION OF GSP ELIGIBILITY, AND TO ENCOURAGE STEPS RESULTING IN SIG- LIMITED OFFICIAL USE

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NIFICANT PROGRESS TOWARD SETTLEMENT BEFORE ANY SUCH DECISION IS MADE, EMBASSY SHOULD MAKE FOLLOWING POINTS TO APPROPRIATE MRGD OFFICIALS:

A. WE HAVE RECENTLY BEEN CONDUCTING A REVIEW OF COUNTRY ELIGIBILITY FOR GSP UNDER THE EXPROPRIATION PROVISION OF THE TRADE ACT OF 1974. FOR THE TIME BEING, WE HAVE CONCLUDED THAT DAHOMEY SHOULD RETAIN ITS STATUS AS AN

ELIGIBLE BENEFICIARY DEVELOPING COUNTRY.

B. WE WILL, HOWEVER, BE RECONSIDERING THE ELIGIBILITY OF A NUMBER OF COUNTRIES, INCLUDING DAHOMEY, BEFORE THE PLANNED TIME FOR IMPLEMENTATION OF GSP ON JANUARY 1, 1976, AND WHEN IF APPROPRIATE, WILL MAKE NECESSARY CHANGES TO THE LISTS OF ELIGIBLE BENEFICIARIES AT THAT TIME.

C. IN PARTICULAR, IT WILL BE DIFFICULT TO SUSTAIN A DETERMINATION THAT DAHOMEY IS TAKING STEPS TO DISCHARGE ITS OBLIGATIONS TO U.S. PROPERTY OWNERS UNDER INTERNATIONAL LAW AS REQUIRED BY THE ACT UNLESS THE MRGD TAKES STEPS SOON RESULTING IN SIGNIFICANT PROGRESS TOWARD SETTLEMENT OF OUTSTANDING AMERICAN CLAIMS. SUCH STEPS MIGHT INCLUDE ISSUANCE OF THE COMPENSATION COMMISSION'S FINDINGS CONCERNING THE CLAIMS OF TEXACO AND MOBIL, OR OTHERWISE BEGINNING SERIOUS DISCUSSIONS OR NEGOTIATIONS WITH THE FIRMS ON COMPENSATION.

D. IF WE WERE UNABLE TO SUSTAIN SUCH A DETERMINATION, DAHOMEY COULD BE EXPECTED TO LOSE ITS ELIGIBILITY FOR GSP. IN ADDITION, THE MRGD SHOULD BE AWARE OF SIMILAR LEGISLATION CALLING FOR THE USG TO SUSPEND BILATERAL ASSISTANCE, AND TO VOTE NEGATIVELY ON LOANS UNDER CONSIDERATION IN INTERNATIONAL DEVELOPMENT BANKS, TO COUNTRIES WHICH EXPROPRIATE AMERICAN PROPERTY WITHOUT DISCHARGING THEIR OBLIGATIONS TO U.S. CITIZENS UNDER INTERNATIONAL LAW (THE HICKENLOOPER AND GONZALEZ AMENDMENTS, RESPECTIVELY). GIVEN THE SIMILARITIES BETWEEN THESE PROVISIONS

IN LANGUAGE AND INTENTION, AN ADVERSE FINDING UNDER THE TRADE ACT WOULD MAKE IT DIFFICULT TO AVOID TAKING THE LIMITED OFFICIAL USE

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REQUISITE ACTION UNDER HICKENLOOPER AND GONZALEZ.

E. WE ARE HOPEFUL THAT SIGNIFICANT PROGRESS WILL BE MADE SOON TOWARD RESOLVING OUTSTANDING AMERICAN CLAIMS IN DAHOMEY.

6. FOR THE EMBASSY'S INFORMATION, GENERAL GUIDANCE ON USG VIEW OF REQUIREMENTS OF INTERNATIONAL LAW WITH RESPECT TO EXPROPRIATED PROPERTY, AND ON POST'S ROLE IN HANDLING INVESTMENT DISPUTES, PREVIOUSLY PROVIDED REF A.

7. F.Y.I. FOR AMBASSADOR. USG DOES NOT WISH TO PROVOKE A CONFRONTATION WITH THE MRGD OVER THIS EXPROPRIATION ISSUE. WE DO, HOWEVER, HAVE U.S. LAWS RELATED TO EXPRO-

PRIATION, AND IN ORDER TO MEET THESE PROVISIONS IT IS

IMPORTANT THAT WE ARE ABLE TO DEMONSTRATE FORWARD PROGRESS
BY THE MRGD. WE WOULD APPRECIATE YOUR HELP IN IMPRESSING
UPON THE MRGD THE IMPORTANCE OF MOVING FORWARD, ESPECIALLY
IN THE NEXT FEW WEEKS. END F.Y.I.

PLEASE ADVISE RESULTS. KISSINGER UNQTE.

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